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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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\+ **ST.APPL. 17/2015 & CM No.5368/2015**

PACETEK SYSTEM (INDIA) PVT LTD ..... Petitioner

Through: Mr Dinesh Mohan Sinha, Mr Rajeev Kumar Deora and Mr Ashwani Tanwar, Advocates.

versus

COMMISSIONER OF TRADE & TAXES & ORS. ..... Respondents

Through: Mr Gautam Narayan, Additional Standing Counsel, GNCTD.

WITH

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ST.APPL. 14/2015 & CM No.5358/2015

PACETEK SYSTEM (INDIA) PVT LTD ..... Petitioner

Through: Mr Dinesh Mohan Sinha, Mr Rajeev Kumar Deora and Mr Ashwani Tanwar, Advocates.

versus

COMMISSIONER OF TRADE & TAXES & ORS. ..... Respondents

Through: Mr Gautam Narayan, Additional Standing Counsel, GNCTD

CORAM:
DR. JUSTICE S.MURALIDHAR
MR. JUSTICE VIBHU BAKHRU

ORDER

% **16.10.2015**

1. These appeals by the Assessee under Section 81 of the Delhi Value Added Tax Act, 2004 (DVAT Act) are directed against the common order dated 6th August 2014 passed by Appellate Tribunal, Value Added Tax, Delhi (AT) in Appeal Nos.1110-1111/ATVAT/12-13 for Assessment Year (AY) 2010-2011.

2. The Appellant Assessee is a registered dealer under the DVAT Act. It is engaged in the trading of computer components and parts. It states that it received discount rebate and incentives worth Rs.6,94,180 on purchases as mentioned in its balance sheet for the AY in question. Holding that the Assessee ought to have reversed the input tax credit (ITC) in terms of Section 10 (5) DVAT Act, the Value Added Tax Officer (VATO) by order dated 29th May 2012 levied tax and interest in the sum of Rs.39,915. By a separate order of the same date, the VATO levied imposed a penalty of Rs.34,709 under Section 86 (10) of the DVAT Act. The said order was upheld by the Objection Hearing Authority (OHA) by order dated 7th September 2012 dismissing the Assessee's appeals. The further appeals by the Assessee have been dismissed by the AT by the impugned order.

3. Initially, these appeals were heard with a batch of appeals where the question concerning the interpretation of Section 10 (5) DVAT Act as amended with effect from 1st April 2010 was addressed. On 21st August 2015, this Court passed the following order in these appeals:

> "1. By a separate judgement today, the Court has allowed the appeals filed by some of the buying dealers registered under the Delhi Value Added Tax, 2004 ('DV AT') against the common judgement dated 6th August, 2014 passed by the Appellate Tribunal, Value Added Tax ('Tribunal') requiring the buying dealers to reverse the input tax credit even for the periods of assessment prior to 1st April, 2010 when Section 10(5) of the DVAT Act was inserted. The Court has, while negating the submissions in that regard of the Department, held that Section 10(5) of the DVAT Act is not merely clarificatory. Further it has been held that since the said provision affects the substantive rights of the buying dealers it cannot be presumed to be retrospective, i.e., it would not be effective earlier than 1st April, 2010. On the above basis, the impugned order of the Tribunal, as far as the aforementioned buying dealers were concerned, was set aside by the Court.
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> 2. However, as far as the present two appeals by Pacetek System (India) Private Limited are concerned, they pertain to assessments for the period beginning from 1st April, 2010. Therefore, these two cases *prima facie* stand on a different footing than the cases of the registered buying dealers whose appeals have been allowed by the judgement passed today. Consequently these two appeals are de-linked from the batch and set down for hearing on 23 rd September 2015."

4. When the appeals were further heard thereafter, it was contended by Mr. Dinesh Mohan Sinha, learned counsel for the Assessee, that notwithstanding that the transactions in question were subsequent to 1st April 2010, they were all inter-state sales and therefore the question of assessing them under the DVAT Act did not arise. It was contended that even Section 80 of the DVAT Act could not validate the assessments since they pertained to transactions that were outside the purview of the DVAT Act. However, this submission was countered by Mr. Gautam Narayan, learned counsel for the

Respondents by submitting that the subject matter of the assessment was indeed only the local sales and not inter-state sales although the order may have erroneously referred to the Central Sales Tax Act (CST). This Court, in light of the above submissions, passed the following order on 5th October 2015:

> "1. In view of the assertion by learned counsel for the Respondents that the figures mentioned in the assessment order pertains only to local sales and not interstate sales, the Appellant is directed to produce before the Court the separate returns stated to have been filed by the Appellant for both types of sale i.e. local sales as well as interstate sales for the assessment period in question i.e. 2010-11.
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> 2. List on 16th October, 2015."

5. Pursuant to the order passed by this Court on 5th October, 2015, Mr Dinesh Mohan states that he has filed separate returns showing local sales as well as interstate sales. However, those documents are not on record.

6. A perusal of the assessment order passed by the VATO on 29th May, 2012 for AY 2010-11 shows that it is captioned 'Notice of default of tax on interest under Section 9 (2) of the CST Act'. There is also reference to the CST Act in paras 1 and 2 of the said order. In fact it also refers to the dealer having made local purchase and local sales as well as inter-state sales (ISS) without any statutory forms showing "full payment of CST".

7. It is still insisted by Mr Gautam Narayan, learned counsel for the Respondent, that the assessment order essentially deals with the input tax credit in the sum of Rs.694180 which was required to be reversed by the

Assessee, and that it did not represent any element of central sales tax. On the other hand, it is insisted by Mr Dinesh Mohan, learned counsel for the Appellant Assessee, that the said assessment order should be read as one dealing with inter-state sales under the CST Act, in respect of which the VATO had no jurisdiction.

8. The Court would like to observe that considerable confusion has been created by the VATO in passing the assessment order in the above manner without clearly indicating what the subject matter of the assessment is. If, in fact, it was not proposed to assess any inter-state sale, there ought not to have been any reference to the CST Act in the impugned assessment order. This aspect appears to have been overlooked both by the OHA as well as the AT.

9. In the circumstances, the Court sets aside the impugned order dated 6th August, 2014 of the AT, the order dated 7th September 2012 of the OHA and the two orders of the VATO dated 29th May 2012. The matter is remanded to the VATO for a *de novo* adjudication after issuing notice to the Assessee in accordance with law. The appeals and applications are disposed of in the above terms.

S.MURALIDHAR, J

VIBHU BAKHRU, J

OCTOBER 16, 2015/MK